

# Indiana Department of Education

Division of Exceptional Learners  
Room 229, State House - Indianapolis, IN 46204-2798



## MEMORANDUM

**DATE:** December 3, 2004 **Reference SE# 04-02**

**TO:** Directors of Special Education  
Early Childhood Coordinators

**FROM:** Robert A. Marra, Associate Superintendent

**RE:** Preschool LRE Review & Contracting with Early Childhood Agencies

The purpose of this communication is to review the least restrictive environment (LRE) requirements for preschool children and contracting procedures with Early Childhood Agencies. Although some progress has been made, many planning districts continue to struggle with offering the full continuum of placement options. 511 IAC 7-18-2(c)(5) permits an LEA to enter into a contractual arrangement for educational services or related services, or both, with early childhood programs as one way to meet LRE needs.

### **Required Adjunct to the Student-Specific Contract and Statement of Assurances**

When the school corporation contracts with an Early Childhood Agency, the Division requires an agreed upon student-specific contract that contains information on duration of services, the cost, methods of payment, general liability insurance and any other particulars between the school corporation and the Early Childhood Agency. The contract is developed by the school and must include a Statement of Assurances provided by the Division and specific facility and program information provided on the form distributed by the Division. When school districts became responsible for serving preschool children with disabilities in 1991-92, the Division required school corporations to develop separate Adjuncts to the "Comprehensive Plan for Delivery of Special Education and Related Services" when contracting for preschool services. The Adjuncts were submitted annually with the Preschool Grant Application. With the change of policies and procedures in recent years, Adjuncts and Assurance Statements are no longer submitted to the Division. However, **this is still required information.** The nature, amount, and type of early childhood contracts are reported annually in the Preschool Grant Application. Although the Division doesn't collect the forms any longer, the required documentation is necessary to ensure that the School Corporation and Early Childhood Agency are in agreement regarding specific roles and responsibilities and the community-based program is an appropriate setting for providing special education in the LRE for a child with disability. The Division has not distributed or updated the Statement of Assurances and a form to document specific program and facility information in recent years. The updated forms are enclosed. Please utilize these updated forms with all new student-specific contracts developed after December, 2004.

## **Preschool LRE Options**

As you know, under IDEA, a child's placement must occur in the LRE where the child's goals can be met. Each child's placement must be consistent with a determination of the child's ability to be educated in an early childhood program with peers who do not have a disability. An early childhood program is an educational environment designed primarily for children without disabilities where the child with disability receives special education and related services. Special classes or removal of students from the general education environment occurs only when it is documented that education in the general education environment (early childhood setting) using supplementary aids and services cannot be satisfactorily achieved. Examples of early childhood programs for preschool children (3 years to 5 years that do not meet the statutory age requirement for kindergarten) include, but are not limited to:

- A public or private preschool
- Head Start program
- Child Care center
- Public school preschool class
- Title 1 preschool class
- Even Start preschool class

Each school district must ensure that a continuum of placement options is available to meet the individual needs of the student with a disability. Given that most school corporations do not provide preschool programs to children without disabilities, other early childhood programs may be utilized to meet LRE needs. The staff qualifications of the Early Childhood Agency must be in compliance with entity's personnel requirements. The school corporation's designated "Teacher of Record" to whom the student with a disability is assigned must be a certified teacher in early childhood special education programs.

## **Free Appropriate Public Education for Preschool Children**

If the preschool child's individualized education program (IEP) indicates that placement is in an Early Childhood Agency in the community is necessary in order to receive a free appropriate public education (FAPE) in the LRE, the school district is responsible for the costs associated with that placement for the period of time necessary to implement the IEP. This also applies to children who may already be in an Early Childhood Agency when referred for special education services. The U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that "it is inconsistent with Part B to require the parent to pay tuition costs associated with providing the opportunity for interaction necessary to implement the child's IEP simply because the child is already in a setting that provides for interaction with nondisabled peers" (OSEP Letter to Neveland, 1995, 2 ECLRP ¶ 255). If the case conference committee (CCC) determines that special instruction must be provided in an early childhood program because it is the LRE for the child, the school district cannot meet its obligation to provide a FAPE by paying for the early childhood special education teacher or related services personnel to serve the child at the Early Childhood Agency with no obligation to pay for the tuition costs associated with the setting for the period of time necessary to implement the IEP (OSEP Letter to Neveland, 1994, 2 ECLRP ¶ 107). Part B or 619 funds may not be used to pay for participation of the child in the Early Childhood Agency beyond the portion of day specified in the IEP.

## **Minimum Standards for Child Care Centers and Quality Child Care Programs**

Early Childhood Coordinators are receiving copies of Child Care licensing information with this communication. Child Care Center rules, regulations of Child Care Ministries, Child Care statutes, legal definitions, and legal exemptions from licensing requirements are included. One of the license exemptions in IC 12-17.2-2-8 is a nonresidential program for a child that provides Child Care for less than (4) hours a day. This exemption applies to preschools and Head Starts in many communities. A registered Child Care

Ministry is also exempt from licensure. The status of licensed and registered Child Care Providers is available by city and county from “Care Finder Indiana” at [www.in.gov/apps/fssa/carefinder](http://www.in.gov/apps/fssa/carefinder). The Division has not specified which licensed, registered, or legally exempt Child Care Agencies the school corporation may or may not enter into contractual arrangements. The Assurances do include conditions when contracting with a Child Care Ministry. The case conference committee determines the appropriateness of a placement option.

The licensing regulations contain new staff qualifications and training requirements that may be of interest to you. In 470 IAC 3-4.7-25, there is a new position called “Lead caregiver” requiring more early education and training than in the past. Also, note that 470 IAC 3-4.7-147 indicates that “caregivers serving children with disabilities who require special program services shall receive in-service training that relates to the specific needs of the child and a consulting resource person must be available to caregivers to provide assistance when necessary.” Also, note that “directors are to be certified in special needs care by the division within six (6) months of employment as provided by or approved by the division”(“division” refers to Division of Family and Children).

Indiana programs that are accredited by the National Association for the Education of Young Children are at <http://www.naeyc.org/accreditation/search/>. Accredited programs must meet quality standards that address areas such as relationships between children and teachers, curriculum, health and safety, and program management.

We hope this information is useful. If you have questions, contact Sheron Cochran at 317-232-0567 or [scochran@doe.state.in.us](mailto:scochran@doe.state.in.us).